

**FILED**  
Clerk  
District Court

**NOV 2 2007**

**For The Northern Mariana Islands**  
By \_\_\_\_\_  
(Deputy Clerk)

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Attorneys for Defendant-Appellants  
Antonio Sablan, Mel Grey, and Richard T. Lizama

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

AUTO MARINE, INC., ROLANDO  
SENIORAN, BENJAMIN T. SANTOS,  
AUGUSTO SANTOS and NORMANDY  
SANTOS,

Plaintiff-Appellees,

vs.

ANTONIO SABLAN, MEL GREY in his  
official capacity as Acting Director of  
Immigration, and RICHARD T. LIZAMA,  
personally and in his official capacity,

Defendant-Appellants.

CIVIL ACTION NO. 05-0042

**NOTICE OF APPEAL;  
CERTIFICATE OF SERVICE**

**NOTICE IS HEREBY GIVEN** that Antonio Sablan, Mel Grey, and Richard T. Lizama, who are all the defendants in the above named case, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the amended judgment entered in this

1 action on Friday, 5 October 2007; from the findings of fact and conclusions of law  
2 entered in this action on Tuesday, 2 October 2007; and from an order denying  
3 Defendants' motion to dismiss entered in this action on Thursday, 12 July 2007.

4  
5 Respectfully submitted,

6 OFFICE OF THE ATTORNEY GENERAL

7 MATTHEW T. GREGORY # F0205  
8 Attorney General

9  
10 Dated: Friday, 2 November 2007.

*Gregory Baka*  
11 GREGORY BAKA # F0199  
12 Deputy Attorney General

13 Attorneys for Defendant-Appellants  
14 Antonio Sablan, Mel Grey, and  
15 Richard T. Lizama  
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**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Appellate Procedure 25(d) and Federal Rules of Civil Procedure 4(c)(2) and 5(b) & (d) the undersigned declarant states as follows:

1. I am eighteen years of age or older, and I certify that I caused to be served the following documents to the last known address(es) listed below on the date(s) indicated.

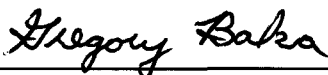
**NOTICE OF APPEAL; AMENDED ENTRY OF JUDGMENT (D.N.M.I. Oct. 5, 2007)  
FINDINGS OF FACT AND CONCLUSIONS OF LAW (D.N.M.I. Oct. 2, 2007);  
ORDER DENYING MOTION TO DISMISS (D.N.M.I. July 12, 2007);  
REPRESENTATION STATEMENT; CIVIL APPEALS DOCKETING STATEMENT;  
CERTIFICATE OF SERVICE**

2. As set forth below, this service was accomplished by personal delivery; U.S. Mail; deposit with Clerk of Court (in attorney box), cf. Fed. R. Civ. P. 5(b)(2)(D); or electronic service, see Local Rule 5.1.

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**Via Personal Delivery & Electronic Service**

3. I declare under penalty of perjury that the foregoing is true and correct. Executed on Friday, 2 November 2007.

  
Deputy Attorney General  
Attorney for Defendant-Appellants  
Antonio Sablan, Mel Grey, and  
Richard T. Lizama

**FILED**  
Clerk  
District Court

**OCT - 5 2007**

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS**

AUTO MARINE, INC., et. al.,

Plaintiffs,

vs.

ANTONIO SABLAN, et. al,

Defendants.

Case No. CV-05-0042

**AMENDED ENTRY OF JUDGMENT**

The court, having rendered a verdict in favor of the plaintiff on their first claim; it is now, therefore, **DECLARED** that 3 CMC § 4434(e)(1) is unconstitutional. Accordingly, defendant Grey, in his official capacity, and anyone else including his successors, are permanently enjoined from enforcing 3 CMC § 4434(e)(1).

**IT IS SO ORDERED.**

**DATED** this 5th day of October, 2007.

  
ALEX R. MUNSON  
U.S. District Court Chief Judge

FILED  
Clerk  
District Court

OCT - 2 2007

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

AUTO MARINE, INC., et. al.,

Case No. CV-05-0042

Plaintiffs,

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

vs.

ANTONIO SABLAN, et. al,

Defendants.

**I. INTRODUCTION**

This case challenges the constitutionality of and application of 3 CMC § 4434(e)(1) on its face and as applied to the plaintiffs. Section 4434(e)(1) provides that “[t]he Director of Labor shall not approve nonresident worker certificates for the following job classifications: taxi cab driver, secretary, bookkeeper, accounting clerk, messenger, receptionist, surface tour boat operator, bus driver, including tour bus driver, and telephone switchboard operator.”

**II. FINDINGS OF FACT**

**BY STIPULATION** of the parties, **THE COURT** incorporates the parties’ Stipulated Facts, No. 44 (Sept. 17, 2007), except that paragraph 40 shall state: “At all times relevant herein, Auto Marine operated its vessels in waters over the submerged lands in or around the Commonwealth of the Northern Mariana Islands.”

**III. CONCLUSIONS OF LAW**

1. The court has original jurisdiction pursuant to 28 U.S.C. § 1331.
2. When challenging the statute upon its face, “the challenger must establish that no set of

1 circumstances exists under which the [statute] would be valid.” *United States v. Salerno*, 481 U.S.  
2 739, 745 (1987). When challenging the statute as applied to this case, the challenger must establish  
3 that “the [statute], by its own terms, infringed constitutional freedoms in the circumstances of the  
4 particular case.” *United States v. Christian Echoes Ministry*, 404 U.S. 561, 565 (1972).

5 3. The Fourteenth Amendment applies to the Commonwealth of the Northern Mariana  
6 Islands (“Commonwealth”) “as if the Northern Mariana Islands were one of the several states.”  
7 Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the  
8 United States of America (“Covenant”) § 501, 48 U.S.C. § 1801 (1993); *Sagana v. Tenorio*, 384  
9 F.3d 731, 739 (9th Cir. 2004).

10 4. While “the Fourteenth Amendment does not deny to States the power to treat different  
11 classes of persons in different ways[,]” *Reed v. Reed*, 404 U.S. 71, 75 (1971), “[t]he Equal Protection  
12 Clause of that Amendment does [] deny to States the power to legislate that different treatment be  
13 accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated  
14 to the objective of that statute,” *id.*

15 5. “Equal protection claims are considered under a two-step analysis. First, [the plaintiff]  
16 must show that the statute in question ‘results in members of a certain group being treated differently  
17 from other persons based on membership in that group.’” *Sagana*, 384 F.3d at 740.

18 6. In general, the Nonresident Workers Act (“NRWA”) creates a preference scheme whereby  
19 a prospective employer must attempt to employ a resident worker before obtaining permission to  
20 employ a nonresident worker. See *id.* at 734-35 for a general description of the NRWA.

21 7. The exception to the preference scheme is Title 3, Commonwealth Code § 4434(e)(1),  
22 which provides that “[t]he Director of Labor shall not approve nonresident worker certificates for the  
23 following job classifications: taxi cab driver, secretary, bookkeeper, accounting clerk, messenger,  
24 receptionist, surface tour boat operator, bus driver, including tour bus driver, and telephone  
25 switchboard operator.” Thus, under 3 CMC § 4434(e)(1), nonresident workers are completely  
26 excluded from working in certain job classifications.

1           8. It is uncontested that the NRWA is a discriminatory statute treating nonresidents  
2 differently from residents and citizens.

3           9. “In the second step, [the] court assesses the legitimacy of a discriminatory statute under  
4 the appropriate level of scrutiny.” *Sagana*, 384 F.3d at 740-41. While the parties disagree on the  
5 level of judicial scrutiny that must be applied to this case, the court finds that under both the rational  
6 basis and intermediate level of scrutiny, the statute does not survive the plaintiff’s equal protection  
7 challenge. *See Id.* at 741 (declining to decide whether intermediate scrutiny or rational basis  
8 applied).

9           10. Under the rational basis test, “[a] classification ‘must be reasonable, not arbitrary, and  
10 must rest upon some ground of difference having a fair and substantial relation to the object of the  
11 legislation, so that all persons similarly circumstanced shall be treated alike.’” *Royster Guano Co. v.*  
12 *Virginia*, 253 U.S. 412, 415 (1920).

13           11. The government did not provide any rationale as to how § 4434(e)(1) has a fair and  
14 substantial relation to the purpose of the NRWA. As stated in *Sagana*, 384 F.3d at 741, the purpose  
15 of the NRWA as a whole is to provide “a balanced and stable economy in the Commonwealth” by  
16 providing residents a preference in employment, to uplift the stagnant Commonwealth economy by  
17 providing temporary alien labor, to prevent the impairment of wages and working conditions of  
18 resident workers due to the availability of temporary alien labor, and to provide “enforcement,  
19 control and regulation of nonresident workers[.]” § 4411(b). These are reasonable and important  
20 purposes. *See Sagana*, 384 F.3d at 741.

21           12. Section 4434(e)(1) does not provide a preference to resident workers; rather, it  
22 completely forecloses nonresident workers from employment in specific job classifications.

23           13. Section 4434(e)(1) does not does not create temporary alien labor because it completely  
24 eliminates the availability of temporary alien labor in the specific job classifications.

25           14. Section 4434(e)(1) does not prevent the impairment of wages and working conditions of  
26 resident workers due to the availability of temporary alien labor because it does not create temporary

1 alien labor in the specific job classifications.

2 15. Furthermore, the government provides no basis why the government has any interest in  
3 preventing all nonresident workers from working in the specific job classifications.

4 16. The government provides no basis why the government has any interest in preventing  
5 employers from hiring a qualified nonresident worker in the specific job classifications if there are  
6 no available qualified resident workers to fill those positions.

7 17. The government provides no basis why the government has an interest in requiring  
8 employers to keep positions unfilled in the event that no qualified resident worker is willing and able  
9 to take those positions.

10 18. The government provides no basis for why the government has an interest in singling out  
11 these specific job classifications from all other jobs in the Northern Mariana Islands.

12 **THEREFORE**, the court concludes that the government failed to provide any rational basis  
13 why nonresident workers should be completely foreclosed from being employed in these specific job  
14 classifications. Accordingly, the court finds that it need not consider whether any heightened level of  
15 scrutiny applies and finds in favor of the plaintiffs on claim 1.

16 **FURTHERMORE**, due to the court's ruling on claim 1, the court need not consider claim 2.

17 **IT IS SO ORDERED.**

18 **DATED** this 2nd day of October, 2007.

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21 ALEX R. MUNSON  
22 U.S. District Court Chief Judge  
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FILED  
Clerk  
District Court

JUL 12 2007

For The Northern Mariana Islands  
By \_\_\_\_\_  
(Deputy Clerk)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN MARIANA ISLANDS

AUTO MARINE, INC., et. al.,

Plaintiffs,

vs.

ANTONIO SABLAN, et. al.,

Defendants.

Case No. CV-05-0042

**ORDER DENYING MOTION TO  
DISMISS**

This matter came before the court on July 12, 2007, on the defendant's motion to dismiss. Attorney G. Anthony Long appeared on behalf of the plaintiffs; attorney Gregory Baka appeared on behalf of the defendants.

**THE COURT**, having considered the arguments of the parties,<sup>1</sup> **DENIES** the defendants' motion to dismiss the plaintiffs' first and second claims.

Under Federal Rule of Civil Procedure 12(b)(6), "[a] complaint should not be dismissed . . . 'unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.'" *Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)). "Dismissal can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory."

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<sup>1</sup> The court stated during the hearing that it would not receive the defendant's reply memorandum that was filed that day as it was untimely.

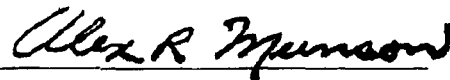
1 The plaintiff's first and second claims requests declaratory and injunctive relief to preclude  
2 enforcement of 3 CMC § 4434(e)(1). Section 4434(e)(1) states that:

3 The Director of Labor shall not approve nonresident worker certificates for the following  
4 job classifications: taxi cab driver, secretary, bookkeeper, accounting clerk, messenger,  
5 receptionist, surface tour boat operator, bus driver, including tour bus driver, and  
telephone switchboard operator.

6 Accordingly, this section mandates that the Director of Labor shall not approve certain nonresident  
7 worker certificates and does not create any liability or responsibility on the part of the plaintiffs. The  
8 fact that the Director of Labor may have approved certain nonresident worker certificates in defiance  
9 of this section should not make the plaintiffs liable or responsible for the actions of the Director of  
10 Labor. Thus, the facts as stated in the complaint support the plaintiffs' entitlement to relief. The  
11 defendants' motion to dismiss is **DENIED**.

12 **IT IS SO ORDERED.**

13 **DATED** this 12<sup>th</sup> day of July, 2007.

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15  
16 ALEX R. MUNSON  
17 U.S. District Court Chief Judge  
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